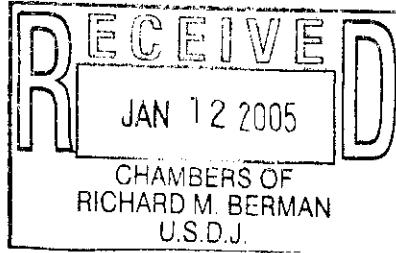


C A D W A L A D E R



Cadwalader, Wickersham & Taft LLP  
New York London Charlotte Washington

100 Maiden Lane, New York, NY 10038  
Tel 212 504 6000 Fax 212 504 6666  
[www.cadwalader.com](http://www.cadwalader.com)

January 12, 2005

**BY HAND**

Honorable Richard M. Berman  
United States District Judge  
Southern District of New York  
40 Centre Street  
Courtroom 706  
New York, New York 10007

Re: Vaicaitiene v. Partners In Care, Inc. at Hospital  
Nurse Service of New York, Inc., 04 Civ. 9125 (RMB)

Confer on 1/14/05 @ 9:30 A.M.

SO ORDERED:

Dates 1/12/05

*Richard M. Berman*

Richard M. Berman, U.S.D.J.

Dear Judge Berman:

We represent the defendants in the above-referenced proceeding. While the Order of the Court dated January 10, 2005, as well as counsel's letter to the Court dated January 11, 2005, were both faxed to the undersigned shortly after 5 p.m. on the dates of those documents, this office has never received from plaintiff's counsel whatever notice was previously transmitted to plaintiff's counsel by the Court.

We do not take a position with respect to counsel's January 11 letter to the Court, except to object to the apparent expectation of plaintiff that discontinuance of the action should have no impact whatsoever on a prior agreement as to defendants' time to respond to the Complaint.

In our initial dialogue with respect to defendants' time to respond, I suggested to plaintiff's counsel that it would be appropriate to adjourn response until such time as the Second Circuit decided the pending petition for rehearing in Coke v. Long Island Care at Home, 376 F.3d 118 (2d Cir. 2004). In its July 22, 2004 decision, the Second Circuit held that a longstanding exemption from Fair Labor Standards Act requirements previously available to defendants was unenforceable. A petition for rehearing was filed in September 2004, and remains sub judice.

Under the circumstances, in the event the Court determines to restore the action to the Court's calendar, defendants respectfully request that their time to respond to the Complaint be extended by the Court to February 28, 2005, and that the tolling agreement between counsel be deemed terminated as of the date originally agreed to for response, February 4, 2003. In the

C A D W A L A D E R

Honorable Richard M. Berman  
January 12, 2005

meantime, defendants would stand ready to participate in a conference at the Court's convenience.

Respectfully,



Kathy H. Chin

KHC:mls

cc: Karl J. Stoecker, Esq.  
Attorney for Plaintiff  
(via facsimile)